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No. 09-128

Supreme Court, U.S.
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In The

Supreme Court of the United States

WILLIAM COVALT, Individually, and
LOREN MORGAN, as Personal Representative
of the Estate of LINDA COVALT, Deceased,

Petitioners,

v.

ALLSTATE INSURANCE COMPANY,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the district court properly exercised its discretion by accepting jurisdiction over this first-filed contractual insurance dispute under the Federal Declaratory Judgment Act.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

In accordance with SUP. CT. R. 29.6, Respondent, Allstate Insurance Company ("Allstate") states that it is a wholly-owned subsidiary of The Allstate Corporation, a publicly-held Delaware corporation.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
SUMMARY OF RESPONDENT'S ARGUMENT	1
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE PETITION	6
I. The Tenth Circuit Properly Affirmed The District Court's Discretionary Decision To Hear Allstate's First-To-Be-Filed Declaratory Coverage Action	6
A. The District Court's Exercise of Jurisdiction Under the Act is Reviewed for Abuse of Discretion	6
B. The Oklahoma Federal District Court was a Proper Forum for Resolution of an Insurance Contract Coverage Dispute Between Citizens of Different States Involving Allegedly Competing Public Policies of Two States	7
C. The District Court Accepted Jurisdiction Based on a Thorough Review of Appropriate, Well-Established Factors	8
II. The District Court's Proper Exercise Of Its Discretion Under The Act Did Not "Change The Law" Governing Any Issue In This Case, Nor Did It Violate "*Erie* Policy" Or Deprive Morgan Of Any Traditional Privilege Of Selecting The Forum For His Tort Claim Against Covalt	14

TABLE OF CONTENTS – Continued

Page

III. There Is No Split Between The Tenth And Fifth Circuits On Any Issue Presented Here 16

CONCLUSION 19

TABLE OF AUTHORITIES

Page

CASES

Aetna Cas. & Sur. Co. v. Ind-Com Elec. Co., 139 F.3d 419 (4th Cir. 1998) 11

Bohannon v. Allstate Ins. Co., 820 P.2d 787 (Okla. 1991) 16

Cincinnati Ins. Co. v. Holbrook, 867 F.2d 1330 (11th Cir. 1989) 13

Cont'l Cas. Co. v. Robsac Indus., 947 F.2d 1367 (9th Cir. 1991) 11

Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938) 14, 16

E.R. Squibb & Sons, Inc. v. Lloyd's & Cos., 241 F.3d 154 (2d Cir. 2001) 8

Farmers Alliance Mut. Ins. Co. v. Jones, 570 F.2d 1384 (10th Cir. 1978) 8

Franklin Life Ins. Co. v. Johnson, 157 F.2d 653 (10th Cir. 1946) 13

Harris v. U.S. Fid. & Guar. Co., 569 F.2d 850 (5th Cir. 1978) 11

Kern v. TXO Prod. Corp., 738 F.2d 968 (8th Cir. 1984) 7

Kunkel v. Cont'l Cas. Co., 866 F.2d 1269 (10th Cir. 1989) 11

Mission Ins. Co. v. Puritan Fashions Corp., 706 F.2d 599 (5th Cir. 1983) 11, 16, 17, 18, 19

TABLE OF AUTHORITIES – Continued

Page

Patterson by Patterson v. Coca-Cola Bottling Co. Cairo-Sikeston, 852 F.2d 280 (7th Cir. 1988) 6

Resort Car Rental Systems, Inc. v. Chuck Ruwart Chevrolet, Inc., 519 F.2d 317 (10th Cir. 1975) 10

Rogers v. Andrus Transp. Servs., 502 F.3d 1147 (10th Cir. 2007) 6

State Auto. Ins. Cos. v. Summy, 234 F.3d 131 (3d Cir. 2000) 13

State Farm Fire & Casualty v. Mhoon, 31 F.3d 979 (1984) 5, 8, 9, 17

St. Paul Fire & Marine Ins. Co. v. Runyon, 53 F.3d 1167 (10th Cir. 1995) 11

United Capitol Ins. Co. v. Kapiloff, 155 F.3d 488 (4th Cir. 1998) 8, 11, 13

Van Dusen v. Barrack, 376 U.S. 612 (1964) 14, 15

Wilton v. Seven Falls Co., 515 U.S. 277 (1995) 6

STATUTES

12 Okla. Stat. § 1651 16

28 U.S.C. § 1404(a) 14

28 U.S.C. § 2201 10

RULES

FED.R.CIV.P. 57 7

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

6A MOORE'S FEDERAL PRACTICE § 57.08(4) (2d ed. 1974) 11

WRIGHT, MILLER, AND KANE, Federal Practice and Procedure, Civil § 2751 (3d ed. 1998) 7

SUMMARY OF RESPONDENT'S ARGUMENT

The Petition presents nothing more than a fact-bound challenge to a district court's discretionary decision to exercise jurisdiction over this first-filed insurance dispute under the Federal Declaratory Judgment Act ("Act"). The underlying dispute involved Oklahoma insurance contracts issued to Oklahoma citizens covering risks principally located in Oklahoma. After giving Petitioner Covalt notice and the opportunity to join in the case on stipulated facts, respondent Allstate filed this action in federal district court in Oklahoma, seeking a declaration of its contractual obligations.

Petitioners thereafter filed a state-court tort lawsuit in New Mexico, and sought to dismiss this lawsuit on the ground that the contractual issue presented here should be decided there. Applying a number of well-settled discretionary factors, the district court below declined to dismiss this action in light of the New Mexico lawsuit, and the United States Court of Appeals for the Tenth Circuit affirmed on the ground that the district court did not thereby abuse its discretion. This case accordingly involves nothing more than the discretionary application of settled law to fact, and does not remotely implicate a circuit conflict. The United States Court of Appeals for the Fifth Circuit case cited by Petitioners also affirmed a district court's exercise of its discretion concerning jurisdiction under the Act, and the district court there simply declined to exercise that jurisdiction on the particular facts of that case. It is

not surprising that courts reach different results in applying discretionary factors to different facts; indeed, that is the very essence of discretion. This Court should deny the Petition.

STATEMENT OF THE CASE

Petitioner William Covalt, his wife Linda, and their daughter LaDon all lived in Oklahoma and were Oklahoma citizens. They owned a 1999 Ford Econoline van principally garaged at their Oklahoma home. In August 2007, the Covalts were returning home from a trip to California. While driving through New Mexico on U.S. Interstate Highway 40 at approximately 1:00 a.m., Mr. Covalt lost control of the van. It rolled over, killing Mrs. Covalt. No other vehicle was involved, no other persons were injured, and no other property was damaged.

Before the accident, the Covalts purchased two insurance policies from Respondent Allstate in Oklahoma: (1) an automotive policy which provided both uninsured motorist ("UM") and liability coverage (the "Auto Policy") and (2) a Personal Umbrella Policy (the "PUP"). Allstate issued the Auto Policy pursuant to the requirements of Oklahoma's Compulsory Insurance laws. (10th Cir. App., Tab 6, p. 144) ("Liability Insurance is provided in this Policy in accordance with coverage required by the Compulsory Insurance Laws of Oklahoma"). The Auto Policy contained an exclusion which reduced (*i.e.*, "stepped-down") the liability coverage limits from $250,000 to Oklahoma's

statutory minimum ($25,000) whenever the injured person was a relative of, and resided with, the insured. The PUP was a general excess liability policy which applied only to bodily injury damages exceeding $100,000 and which excluded all coverage for personal injuries sustained by an insured.

Both the Auto Policy and the PUP were purchased in Oklahoma, issued in Oklahoma, and covered risks principally located in Oklahoma. Consequently, both policies contained virtually the same choice of law provision which defaulted to Oklahoma law unless one stated exception applied. (10th Cir. App., Tab 6, p. 159 (Auto Policy), and p. 182 (PUP).)

After the accident, Mr. Covalt hired an Oklahoma attorney and filed a probate action concerning his wife's Last Will and Testament in Oklahoma state court. Mrs. Covalt's Will named Mr. Covalt (the tortfeasor) as the sole beneficiary and personal representative of her estate. (10th Cir. App., Tab 6, p. 201.) Mr. Covalt, as Mrs. Covalt's surviving spouse, then asserted a claim with Allstate (through the same attorney) under the Auto Policy for Mrs. Covalt's death.

Allstate determined that the UM limits of $250,000 were owed, and that the Auto Policy's "step-down" provision limited liability coverage to Oklahoma's minimum limits ($25,000) because the injured person (Mrs. Covalt) was a resident relative of the insured (Mr. Covalt). In early November 2007, Allstate's Oklahoma counsel contacted Mr. Covalt's counsel and informed him that Allstate would pay the

Auto Policy's UM limits of $250,000 and offered the stepped-down liability coverage limits of $25,000. Allstate's counsel also expressed Allstate's conclusion that the step-down provision was enforceable under Oklahoma law, which governed the construction of the policy. Mr. Covalt's attorney stated his belief that New Mexico law governed this insurance policy and that the step-down provision was not enforceable under that law. (10th Cir. App., Tab 4, p. 43.)

Allstate's counsel informed Mr. Covalt's counsel that Allstate intended to file a declaratory judgment action in Oklahoma federal court on the issue of coverage, and *invited* Mr. Covalt to join in that action on stipulated facts. Mr. Covalt's counsel never responded. *Id.* Four days later, on November 13, 2007, Allstate's counsel sent a courtesy copy of the Complaint seeking declaratory judgment to Mr. Covalt's counsel prior to filing, and again invited him to join in the action. Again, there was no response. Later that same day, Allstate filed this declaratory judgment action in the United States District Court for the Western District of Oklahoma. Mr. Covalt subsequently nominated another Oklahoma citizen, Petitioner Loren Morgan, and had him appointed personal representative of his wife's estate by the Oklahoma probate court, without notifying Allstate. (10th Cir. App., Tab 6, p. 203.)

Mr. Covalt's counsel then associated with a New Mexico lawyer and filed suit in that state on December 6, 2007, on behalf of Mr. Morgan *against* Mr. Covalt. The New Mexico suit originally included

only allegations of *tort liability* (wrongful death). There is no dispute over the choice of New Mexico as a proper venue for litigating any *tort* claims arising from the accident. However, in an effort to make the second-filed New Mexico state action mirror Allstate's federal declaratory contract action, Mr. Morgan filed an amended complaint on December 17, 2007, and a second amended complaint on December 20, 2007, adding Allstate as a defendant and asserting a claim for declaratory judgment that the Oklahoma policy exclusions were unenforceable under New Mexico law. (10th Cir. App., Tab 4, pp. 33-38.) Mr. Covalt then moved to dismiss or stay this Oklahoma federal declaratory action.

The district court denied that motion after concluding, based on all applicable factors, that this action was an appropriate use of the Act. Specifically, the district court applied the discretionary factors set forth by the Tenth Circuit in *State Farm Fire & Casualty Company v. Mhoon*, 31 F.3d 979, 983 (1984), for determining when a district court should exercise jurisdiction over a declaratory action.

After the district court denied Covalt's Motion to Dismiss or Stay, Allstate moved for summary judgment on the issue of coverage. The district court then addressed the conflict of law issue, holding that Oklahoma law governed the contract dispute, and ruled in favor of Allstate on the merits. On appeal, a unanimous panel of the Tenth Circuit, in an unpublished

opinion, affirmed the district court's analysis and conclusions in all respects.

REASONS FOR DENYING THE PETITION

I. The Tenth Circuit Properly Affirmed The District Court's Discretionary Decision To Hear Allstate's First-To-Be-Filed Declaratory Coverage Action.

A. The District Court's Exercise of Jurisdiction Under the Act is Reviewed for Abuse of Discretion.

"Since its inception, the Declaratory Judgment Act has been understood to confer on federal courts *unique and substantial discretion* in deciding whether to declare the rights of litigants." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995) (emphasis added). This Court has "distinguish[ed] the declaratory judgment context from other areas of the law in which concepts of discretion surface" and has given lower courts a larger "breadth of leeway" for their exercise of discretion under the Act. *Id.*, at 287. So long as the lower court's decision to accept jurisdiction is not arbitrary, capricious or manifestly unreasonable, and does not exceed the bounds of permissible choice under the circumstances, the lower court will be found to have properly exercised its substantial discretion. *Rogers v. Andrus Transp. Servs.*, 502 F.3d 1147, 1153 (10th Cir. 2007); *Patterson by Patterson v. Coca-Cola Bottling Co. Cairo-Sikeston*, 852 F.2d 280,

283 (7th Cir. 1988); *Kern v. TXO Prod. Corp.*, 738 F.2d 968, 971 (8th Cir. 1984).

B. The Oklahoma Federal District Court was a Proper Forum for Resolution of an Insurance Contract Coverage Dispute Between Citizens of Different States Involving Allegedly Competing Public Policies of Two States.

The Oklahoma federal district court was a perfectly appropriate forum for resolution of this contractual insurance coverage dispute involving Allstate, Oklahoma citizens and Oklahoma policies, particularly given the presence of an underlying alleged conflict of laws between two states. The Act states in pertinent part as follows: "In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201; *accord*, FED.R.CIV.P. 57. Congress passed the Act for the very purpose of the early resolution of disputes: "The remedy made available by the Declaratory Judgment Act and Rule 57 is intended to . . . afford one threatened with liability an early adjudication without waiting until an adversary should see fit to begin an action[.]" WRIGHT, MILLER, AND KANE, Federal Practice & Procedure, Civil § 2751 (3d ed. 1998).

Circuit courts have recognized the usefulness of the Act in resolving insurance coverage disputes. As the Tenth Circuit has stated, "Declaratory judgment actions are seen as useful in actions wherein insurance companies seek to have their liability declared. *We have expressly recognized that one of the primary functions of the Act is to provide the insurer such a forum.*" *Farmers Alliance Mut. Ins. Co. v. Jones*, 570 F.2d 1384, 1386 (10th Cir. 1978) (emphasis added). Indeed, federal declaratory judgment actions are the process by which insurance coverage disputes are traditionally resolved. *United Capitol Ins. Co. v. Kapiloff*, 155 F.3d 488, 494 (4th Cir. 1998); *see also, E.R. Squibb & Sons, Inc. v. Lloyd's & Cos.*, 241 F.3d 154, 177 (2d Cir. 2001) ("[L]itigation over insurance coverage has become the *paradigm* for asserting jurisdiction [under the Act.]") (emphasis added).

C. The District Court Accepted Jurisdiction Based on a Thorough Review of Appropriate, Well-Established Factors.

The district court acted within its substantial discretion by applying the well-established factors set forth by the Tenth Circuit in *State Farm Fire & Casualty Company v. Mhoon*, 31 F.3d 979 (10th Cir. 1994) to the unique facts of this case. In *Mhoon*, the Tenth Circuit held that a district court should consider the following factors when determining whether to hear a declaratory action:

(1) Whether the declaratory action would settle the controversy;

(2) Whether it would help clarify the parties' legal relations at issue;
(3) Whether it is being used for "procedural fencing";
(4) Whether it would increase friction between federal and state courts and encroach upon state jurisdiction; and,
(5) Whether there is a better or more effective alternative forum.

In both the district court and on appeal, Petitioners conceded that *Mhoon* governed their Motion to Dismiss or Stay. (10th Cir. App., Tab 4, p. 22.) Petitioners have never argued that *Mhoon* contravened the law from this Court or any appellate court. Petitioners failed to show that the district court's discretionary application of even one of the *Mhoon* factors was arbitrary or manifestly unreasonable. That is why the Tenth Circuit had no difficulty affirming the district court's application of those discretionary factors to the facts of this case.

The record amply reveals that the district court's decision to hear the declaratory action was reasonable and well-grounded in both the facts and law. The lower court reviewed the extensive and predominating contacts of this contract dispute showing that all material contacts were in Oklahoma and concluding that it would be appropriate for the parties to litigate

coverage in an Oklahoma forum. (Petitioners' App., p. 34a.)[1]

Moreover, the district court observed that the wrongful death claim filed in New Mexico was distinct and severable from the coverage issue under the Oklahoma policies. (Petitioners' App., p. 32a-33a.) Coverage is a matter of contract construction and enforceability which is distinct from the tort issues of liability and damages. *Resort Car Rental Sys., Inc. v. Chuck Ruwart Chevrolet, Inc.*, 519 F.2d 317, 319 (10th Cir. 1975) ("[T]he construction of a contract is a question of law for the court."). The plain language of the Act clearly establishes that a declaratory coverage action need not resolve underlying tort claims. 28 U.S.C. § 2201 ("[A]ny court of the United States . . . may declare the rights and other legal relations of

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[1] The lower court found the following Oklahoma contacts: (1) Allstate issued both insurance policies in Oklahoma; (2) The Oklahoma Auto Policy expressly notes that the insurance is provided in accordance with the requirements of Oklahoma's Compulsory Financial Responsibility laws; (3) Mr. Covalt, as a policyholder, the alleged tortfeasor, and sole beneficiary of his deceased wife's estate, is a citizen of Oklahoma; (4) Mrs. Covalt was, prior to her death, a citizen of Oklahoma; (5) The Personal Representative of the deceased's Estate is a citizen of Oklahoma; (6) The Estate's primary legal counsel is located in Oklahoma; and, (7) The insured auto involved in the accident was principally garaged in Oklahoma. The only connection of this case to New Mexico was that the underlying accident happened to occur there. (Petitioners' App., p. 34a.)

any interested party . . . whether or not further relief is or could be sought.").[2]

Furthermore, the district court considered (and properly rejected) Petitioners' contention that Allstate had engaged in improper "procedural fencing." There was no evidence that Petitioners were lulled into inaction, that Allstate preemptively filed because Petitioners were threatening litigation or that Allstate acted for any other improper or abusive reason.[3] Rather, as the district court noted, Allstate's actions were "above board," as it attempted to resolve this matter in an open, prompt manner. Allstate twice invited Petitioners to join the declaratory coverage

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[2] *See also, Kunkel v. Cont'l Cas. Co.*, 866 F.2d 1269, 1276 (10th Cir. 1989) ("Nothing in the Declaratory Judgment Act prohibits a court from deciding a purely legal question of contract interpretation which arises in the context of a justifiable controversy presenting other factual issues."); *Kapiloff*, 155 F.3d at 494 (upholding a declaratory judgment even though it did not resolve underlying state law tort claims); *Harris v. U.S. Fid. & Guar. Co.*, 569 F.2d 850, 852 (5th Cir. 1978) ("It is well settled that a district court may render a declaratory judgment though that judgment will not settle all the issues of the entire controversy. The controversy settled by the declaratory judgment need only be an autonomous dispute."); 6A MOORE'S FEDERAL PRACTICE § 57.08(4) (2d ed. 1974).

[3] For examples where such conduct did occur, *see, Aetna Cas. & Sur. Co. v. Ind-Com Elec. Co.*, 139 F.3d 419, 423 (4th Cir. 1998); *Mission Ins. Co. v. Puritan Fashions Corp.*, 706 F.2d 599 (5th Cir. 1983); *Cont'l Cas. Co. v. Robsac Indus.*, 947 F.2d 1367, 1373 (9th Cir. 1991); (*overruled on other grounds*) and, *St. Paul Fire & Marine Ins. Co. v. Runyon*, 53 F.3d 1167, 1170 (10th Cir. 1995).

action with stipulated facts, informed them in advance of the intent to file the declaratory action in federal court, selected a convenient court in Petitioners' home-state and, after receiving no response, proceeded to file in a timely manner.[4] (Petitioners' App., p. 35a.)

Finally, the district court properly weighed whether its resolution of the coverage dispute involving Oklahoma citizens, Oklahoma insurance policies and risks principally located in Oklahoma might "gratuitously interfere" with a New Mexico state court's jurisdiction. The district court observed that, while the administrative regulation of the

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[4] As the District Court observed, if any party had engaged in procedural gamesmanship, it was Petitioners: "To the extent either party has engaged in procedural fencing or forum shopping, **the court concludes that Mr. Covalt and his counsel have done at least as much, *if not more*,** than Allstate and its counsel." (Petitioners' App., p. 35a) (emphasis added). Covalt's counsel told Allstate no personal representative had been appointed and never responded to Allstate's open invitations. After Allstate filed, Covalt and his attorney waived his appointment as Personal Representative, had Morgan appointed in his place, never gave Allstate notice of the new appointment, left Oklahoma and traveled 340 miles to New Mexico to "sue" Covalt (but not Allstate) in New Mexico state court for wrongful death. Then, after adding Allstate to the New Mexico case under a declaratory judgment claim of their own, Petitioners filed two Motions to Dismiss Allstate's first-filed federal action and argued that it was "gratuitously interfering" with their second-to-be-filed New Mexico action, and that Allstate's claim should be dismissed for failing to join Morgan, the theretofore undisclosed Personal Representative. (*See*, 10th Cir. App., Tabs 4, 14.)

insurance industry is traditionally left to the states, the resolution of coverage disputes under insurance policies is an accepted role for federal courts and an appropriate use of the Act. (Petitioners' App., pp. 33a-34a.) *See also, Kapiloff,* 155 F.3d at 494; *Cincinnati Ins. Co. v. Holbrook*, 867 F.2d 1330, 1333 (11th Cir. 1989).

Petitioners submitted no evidence to support their claim of gratuitous interference. In essence, they argued to the lower court (as they do now to this Court) that *anytime* an insurance company files a declaratory action in federal court, if the insured or tort claimant later files his or her own declaratory action in a state court, the federal court must stand down. The district court properly rejected that extreme position. *See, e.g., State Auto. Ins. Cos. v. Summy*, 234 F.3d 131, 136 (3d Cir. 2000) (holding gratuitous interference occurs when a federal court declares the rights of litigants on unsettled issues of state law currently pending before that state's appeals court); *Franklin Life Ins. Co. v. Johnson*, 157 F.2d 653, 659 (10th Cir. 1946) (The mere "maintenance of [a] declaratory judgment action does not amount to a usurpation of state court jurisdiction. There is no interference with the orderly and comprehensive disposition of pending state court litigation.").

II. The District Court's Proper Exercise Of Its Discretion Under The Act Did Not "Change The Law" Governing Any Issue In This Case, Nor Did It Violate "Erie Policy" Or Deprive Morgan Of Any Traditional Privilege Of Selecting The Forum For His Tort Claim Against Covalt.

Petitioners insist, however, that the district court's decision to accept jurisdiction "changed the law" applicable to this Oklahoma-based contract dispute, deprived Morgan of his choice of forum for his tort claim, and somehow violated the principles of *Erie Railroad Company v. Tompkins*, 304 U.S. 64 (1938). Petitioners base that argument on *Van Dusen v. Barrack*, 376 U.S. 612 (1964).

That reliance is unavailing. The only issue in *Van Dusen* was whether a change in venue under the federal transfer statute, 28 U.S.C. § 1404(a), should result in a change in the substantive law applicable to the plaintiffs' tort claims. 376 U.S., at 625.[5] This Court ruled that a change of venue could not be used to shut the courthouse doors to the plaintiffs'

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[5] In *Van Dusen*, personal representatives of the victims of a commercial airliner crash in Massachusetts filed numerous wrongful death actions in both Massachusetts and Pennsylvania federal court. The defendants moved under 28 U.S.C. § 1404(a) to transfer the Pennsylvania actions to Massachusetts. The district court held that transfer of venue to another state was proper even though numerous Pennsylvania plaintiffs had not qualified under Massachusetts law to sue as personal representatives.

wrongful death claims by changing the applicable law.

Van Dusen is inapposite because a transfer of venue did not occur here nor was it ever requested. Thus, no "change of law" was made. In fact, when the district court accepted jurisdiction over Allstate's contractual declaratory judgment claim, the question of which state's law would apply to the contracts was still undetermined. The conflict of laws issue was not presented for decision by Petitioners' Motions to Dismiss or Stay Proceedings, but only by Allstate's subsequent Motion for Summary Judgment. Also, Petitioners' characterization that a change of law occurred assumes (incorrectly) that New Mexico law governed the insurance contracts *in the first instance*. Whether New Mexico law governed the policies was a legal proposition which they failed to demonstrate to the district court, failed to demonstrate to the Tenth Circuit, and have not even attempted to demonstrate to this Court.

Furthermore, the district court decision to accept jurisdiction over the declaratory judgment claim did not foreclose, or in any way affect, Petitioner Morgan's ability to prosecute his tort claim in the forum of his choosing (New Mexico). The parties never disputed that New Mexico law governed Morgan's *tort* claim or that New Mexico state courts would have jurisdiction over that claim. Consequently, it is clear that the district court's proper exercise of jurisdiction over the contractual coverage dispute did not deprive Morgan of any traditional prerogative to select the forum for his tort claim.

Further, Petitioners' effort to invoke "*Erie* Policy" (that "the 'accident of diversity' [should] not result in a substantially different outcome in federal court than would be achieved if the action were filed in state court") (Petition, p. 6) must also fail because the "*Erie* Policy" they invoke clearly was not violated here. That doctrine aims to prevent inconsistent results between cases filed in a federal court under diversity jurisdiction and cases filed in state court *in the same state where the federal court sits*. This case presents no danger of any such inconsistency. Had Allstate filed this declaratory judgment action in Oklahoma state court, Oklahoma's choice of law rules still would have governed. *See, Bohannon v. Allstate Ins. Co.*, 820 P.2d 787 (Okla. 1991); 12 Okla. Stat. § 1651 (providing declaratory judgment actions in Oklahoma state courts). Thus, while the diversity of citizenship between the litigants here allowed Allstate to bring the matter in the neutral federal court, it in no way resulted in a different outcome than would have occurred if the case had been brought in Oklahoma state court.

III. There Is No Split Between The Tenth And Fifth Circuits On Any Issue Presented Here.

Petitioners claim that the Fifth Circuit in *Mission Insurance Company v. Puritan Fashions Corporation*, 706 F.2d 599 (5th Cir. 1983) held that a district court should not hear a federal declaratory action if doing so would change the law to be applied

in the declaratory defendant's state court action. (Petition, p. 10.) Again, no "change in the law" occurred here. But even if it did, the Fifth Circuit in *Mission* never endorsed any such rule.

Rather, the Fifth Circuit in *Mission* (like the Tenth Circuit in this case) utilized several factors to review a district court's exercise of discretion under the Act regarding whether to accept jurisdiction. *Id.*, at 601 ("The district court may . . . take into account a wide variety of factors. Our review of the district court's action is limited to whether it abused its discretion.") (In fact, the Tenth Circuit in *Mhoon* even cites *Mission* as support for the abuse of discretion standard it employs. *Mhoon*, 31 F.3d at 983, fn. 6). Moreover, a comparison of *Mission* to the Tenth Circuit's decision in the present case reveals that both circuits considered and applied effectively the same law. *Compare, Mission*, 706 F.2d at 602-03, *with Covalt*, Petitioners' App., pp. 32a-35a.

A comparison of *Mission* to the present case also makes clear that the lower courts reached different discretionary decisions not because they applied different law, but because they faced markedly different facts. *Mission* involved an insurance claim by a clothing manufacturer for the alleged theft of $900,000 in merchandise. The clothing was manufactured in Texas, but the FBI investigation led to the conviction of two individuals in California. The insurance policy contained a one-year limitations period for filing suit. The insured requested an extension of that deadline. The insurer promised to

allow the insured additional time to file suit up to thirty days after such time as the claim might be denied in writing. Subsequently, the insurance company's "president orally rejected [the] claim, and this declaratory judgment suit was filed by the [Insurance] Company in Texas *that same day.*" *Mission*, 706 F.2d at 600.

The insured then filed its own suit in California asserting not only a declaratory judgment claim, but claims of bad faith, fraud and unfair claim settlement practices against the insurance company, as well as tort claims for conversion against other defendants. The Fifth Circuit affirmed the Texas federal district court's decision not to accept jurisdiction, finding:

> Plaintiff caused Defendant to delay filing suit in California by representing that Plaintiff was considering the merits of the claim and by allowing an extension of the one year limitations period. But for those representations and implications, Defendant would have been the first to file an action presenting the same issues (plus a few more), and the forum for the trial of those [factual] issues presented in this suit would be in California.

Id., at 601.

Clearly, the facts of *Mission* are nothing like those here. As noted above, Allstate promptly informed the insured of its coverage determination. When the insured disagreed, Allstate informed him in advance of its intention to file a declaratory action in

Oklahoma federal court and invited him to participate. The insured never expressed any intention to file suit. Further, there were no factual issues to be determined in the coverage dispute, which was purely a legal issue, and all contacts relevant to the contractual dispute were in Oklahoma, not New Mexico. Thus, the Tenth Circuit's affirmance of the lower court's decision to accept jurisdiction was entirely consistent with the Fifth Circuit's holding in *Mission*.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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